

Remarks/Arguments:

The pending claims are 1-42. Claims 1, 16, 17, 23, 33, and 39 have been amended. No new matter is introduced therein.

Applicant appreciates the courtesies extended to his representatives during a telephone interview on December 7, 2006.

Following a discussion of the statutory double patenting rejection of claim 28, the Examiner agreed to reconsider the rejection and asked Applicant's representatives to show the differences between claim 28 and claim 18 of U.S. Patent No. 7,114,629. Those differences are provided below.

Applicant's representatives also discussed with the Examiner the trash bin disclosed by Sosan and the subject matter recited in pending claim 1. Again, the Examiner's time and courtesy is appreciated.

Claims 1-6, 8, 11, 12, 16-19, 23, 24, 33-35 and 39-42 have been rejected under 35 U.S.C. § 102(b) as anticipated by Sosan (U.S. Patent No. 5,163,574).

Claim 1 has been amended to recite

a body adapted to receive the container, said body always being open such that there is always access to the door of the container when the container is received in the body; and

an elongate arm coupled to said body for reciprocal extension along an axis of said arm between an extended position and a retracted position with respect to said body, said arm being configured for engagement with the door of the container

These features are not shown or suggested in Sosan.

The trash bin disclosed in Sosan is not configured to hold a container having a door. Instead, the trash bin in Sosan is designed "to permit insertion and removal of trash bags." (Abstract). In addition, Sosan does not have a body "always being open such that there is always access to the door of the container when the container is received in the body." Instead, Sosan includes a push rod 46 to maintain a flap 22 in a closed position except when the pedal 28 is depressed (Col. 4, lines 16-29). Additionally, upper portion 24 generally covers lower portion 26. Therefore, the trash bin of Sosan is not always open such that there is always access to a door of a container when a container is received in a body as recited in amended claim 1.

For all of these reasons, claim 1 and dependent claims 2-6, 8, 11, and 12 are not subject to rejection under 35 U.S.C. § 102(b) as anticipated by Sosan.

Claim 16 has been amended to recite, in part:

A door-less carrier configured to hold a container having a door mounted for reciprocation between opened and closed positions

* * * * *

a body adapted to receive the container, said body comprising a body portion configured to support the container and a hood pivotally coupled to said body portion . . .

* * * * *

said body portion and said hood of said door-less carrier together defining an access opening that is always open for access to the door of the container when the container is received by said body.

These features are not shown in Sosan. The trash bin in Sosan has a door 22. Claim 16, however, now recites a "door-less carrier." For this reason alone, amended claim 16 is not subject to rejection under 35 U.S.C. § 102(b) as anticipated by Sosan.

In addition, amended claim 16 recites a body that comprises a body portion and a hood and that the body portion and the hood "together defin[e] an access opening that is always open for access to the door of the container when the container is received by said body." As explained with respect to amended claim 1, Sosan does not disclose an "access opening that is always open for access to the door of the container when the container is received by said body."

For all of the above reasons, amended claim 16 is not subject to rejection under 35 U.S.C. § 102(b) as anticipated by Sosan.

Claim 17 has been amended to recite

an arm coupled to said hood for reciprocal movement with respect to said hood, said arm having a first portion coupled to the hood with a longitudinal axis substantially parallel to the reciprocal movement and a second portion angled with respect to the first portion and configured to engage a surface of the door.

Sosan fails to disclose an arm coupled to a hood of a carrier for reciprocal movement with respect to the hood, wherein the arm has a first portion coupled to the hood with a longitudinal axis substantially parallel to the reciprocal movement and a second portion angled with respect to the first portion and configured to engage a surface of a door of such a container, as is now recited in amended claim 17. Some of the reasons why Sosan does not disclose these features were explained above with respect to amended claims 1 and 16.

Accordingly, amended claim 17 and dependent claims 18 and 19 are not subject to rejection under 35 U.S.C. § 102(b) as anticipated by Sosan.

Claim 23 has been amended to recite

a body portion having a wall at least partially defining a cavity sized to at least partially receive the container, at least a portion of said wall being substantially hollow;

* * * * *

a flexible member coupled to said arm to facilitate said reciprocal movement of said arm, said flexible member extending through an interior of said substantially hollow portion of said wall of said body portion.

Sosan does not disclose "at least a portion of said wall being substantially hollow" or a flexible member "extending through an interior of said substantially hollow portion of said wall of said body portion." Sosan does not contain any disclosure that any of its walls are hollow. In addition, Fig. 3 of Susan shows that cable 30 is attached to surfaces on the sides of upper portion 24 and lower portion 26 by means of cable fasteners 45 and screws 47. (col. 3, lines 54-56). Sosan does not disclose any hollow wall portion or cable 30 extending through such a hollow wall portion. In other words, cable 30 of Sosan's bin cannot extend "through an interior of said substantially hollow portion of said wall of said body portion" because none of the walls of Sosan's bin are hollow.

Accordingly, amended claim 23 and dependent claim 24 are not subject to rejection under 35 U.S.C. § 102(b) as anticipated by Sosan.

Claim 33 has been amended to recite

an arm coupled for reciprocal movement with respect to said rotatable hood along an axis of said arm, said arm having a first portion coupled to the rotatable hood with a longitudinal axis substantially parallel to the reciprocal movement and a second portion angled with respect to the first portion and oriented for engagement with a surface of the door when the rotatable hood is in the first position.

As discussed above, Sosan does not disclose any of these features. Accordingly, amended claim 33 and dependent claims 34-35 are not subject to rejection under 35 U.S.C. § 102(b) as anticipated by Sosan.

Claim 39 has been amended to recite

an arm coupled for reciprocal movement with respect to said hood, said arm having a first portion coupled to the hood with a longitudinal axis substantially parallel to the reciprocal movement and a second portion angled with respect to the first portion for engaging the door of the container.

Sosan does not disclose these features for the same reasons discussed above. Accordingly, amended claim 39 and dependent claims 40-42 are not subject to rejection under 35 U.S.C. § 102(b) as anticipated by Sosan.

Claims 1-6, 17, 18, 23, 24, and 39-42 have been rejected under 35 U.S.C. § 102(b) as anticipated by Marek (U.S. Patent No. 3,333,721).

With respect to amended claim 1, Marek does not disclose "[a] carrier configured to hold a container having a door mounted for reciprocation between opened and closed positions." Instead, the container of Marek is designed to hold a cardboard box (col. 3, lines 5-7) that has flaps which are folded down against the outside of the cardboard box while the cardboard box is inside the body. (col. 3, lines 7-10). Accordingly, Marek does not suggest a structure designed for holding a container having a door.

It is important to note that, Marek does not have a body "always being open such that there is always access to the door of the container when the container is received in the body." Instead, the container in Marek is generally covered by a cover 38. Access can be gained to a cardboard box inside the container of Marek only when door 50 is opened or when cover 38 is removed.

Accordingly amended claim 1 and dependent claims 2-6 are not subject to rejection under 35 U.S.C. § 102(b) as anticipated by Marek.

With respect to amended claim 17, Marek does not disclose an arm "having . . . a second portion angled with respect to the first portion and configured to engage a surface of the door." The door 50 of Marek cannot be considered an arm having a longitudinal axis. If door 50 has a long axis, it is not parallel to its reciprocal movement. Even though part of flange 56 is down-turned, there is no disclosure in Marek that the down-turned portion of flange 56 is configured to engage a surface of a door of a container that is inside the carrier. Instead, Marek suggests that a cardboard box within the container has its flaps turned down and out of the way. Accordingly, amended claim 17 and dependent claim 18 are not subject to rejection under 35 U.S.C. § 102(b) as anticipated by Marek.

With respect to amended claim 23, Marek does not disclose "a body portion having a wall . . . at least a portion of said wall being substantially hollow." The Office Action does not identify anything in Marek that may be construed as a portion of a wall that is substantially hollow. In addition, Marek does not disclose a flexible member "extending through an interior of said substantially hollow portion of said wall." Instead, Mark's cable 58 extends outside of the container. Accordingly, amended claim 23 and dependent claim 24 are not subject to rejection under 35 U.S.C. § 102(b) as anticipated by Marek.

Claim 39 has been amended in a manner that is similar to the amendment of claim 17. Accordingly, amended claim 39 and dependent claims 40-42 are not subject to rejection under 35 U.S.C. § 102(b) as anticipated by Marek for the same reasons that amended claim 17 is not subject to the same rejection.

Claims 7 and 13-15, 20, 22, 25, 27, 36 and 38 have been rejected under 35 U.S.C. § 103(a) as unpatentable over Sosan or Marek.

With respect to claims 7, 22, 27, and 38, the Office Action has taken Official Notice that locking brackets for pivoting levers are well known. With respect to claims 13-15, 25, and 36, the Office Action has taken Official Notice that arm locking members are well known. Claims 7 and 13-15 depend from amended claim 1. Claims 20 and 22 depend from amended claim 17. Claims 25 and 27 depend from amended claim 23. Claims 36 and 38 depend from amended claim 33. In view of the amendment to independent claims 1, 17, 23 and the reasons set forth above, the listed dependent claims are not subject to rejection under 35 U.S.C. § 103(a) as unpatentable over Sosan or Marek.

Claims 9, 10, 21, 26, and 37 have been rejected under 35 U.S.C. § 103(a) as unpatentable over Sosan. The Office Action has taken Official Notice that hood key locks are well known. Claims 9 and 10 depend from amended claim 1. Claim 21 depends from amended claim 17. Claim 26 depends from amended claim 23. Claim 37 depends from amended claim 33. In view of the amendments to independent claims 1, 17, 23 and 33, the listed dependent claims are not subject to rejection under 35 U.S.C. § 103(a) as unpatentable over Sosan.

The Office Action provisionally rejected claim 28 under 35 U.S.C. § 101 for statutory double patenting based upon claim 72 of then-pending Application No. 09/845,976. The '976 application has now issued as U.S. Patent No. 7,114,629. Since claim 18 of the '629 patent corresponds to claim 72 of the '076 application, Applicant believes that the PTO would now convert the provisional statutory double patenting rejection into a double patenting rejection that is no longer provisional. The statutory double patenting rejection is respectfully traversed.

"A reliable test for double patenting under 35 U.S.C. 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent." M.P.E.P. 804 II (A).

The following features recited in patent claim 18 are not found in application claim 28:

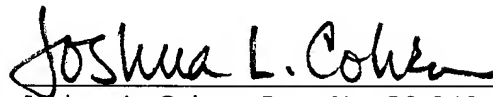
Selected Recitations From Patent Claim 18	Selected Recitations from Current Application Claim 28	Comparison
a container having a door mounted for reciprocation between opened and closed positions	A carrier configured to hold a container having a door mounted for reciprocation	Claim 28 does not affirmatively recite a container.
a carrier holding said container	A carrier configured to hold a container having a door	Claim 28 does not affirmatively recite that the carrier holds a container.
a body portion at least partially defining a cavity receiving the container	a body portion at least partially defining a cavity sized to receive the container	Claim 28 does not affirmatively recite that a container is received
a hood . . . extending over at least a portion of the container	a hood . . . configured to extend over at least a portion of the container	Claim 28 does not recite that the hood actually extends over at least a portion of a container.
said arm being engaged to the door of the container and adapted to reciprocate the door of the container between the closed and opened positions	said arm being adapted to reciprocate the door of the container between the closed and opened positions	Claim 28 does not recite that the arm is engaged to the door of the container.

The above table shows that application claim 28 could be literally infringed without literally infringing claim 18 in the '629 patent (e.g., because claim 28 of this application does not recite a container and claim 18 of the '629 patent does). Accordingly, Applicant requests that the statutory double patenting rejection of claim 28 be withdrawn.

Claims 1-27, 29-32, and 33-42 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as unpatentable over claims 37-52, 60, 72, 79, 84 and 102 of the '976 application. Applicant is concurrently submitting a terminal disclaimer to overcome this rejection.

All of the claims in this application are now in condition for allowance over the prior art of record, which action is requested.

Respectfully submitted,



Joshua L. Cohen, Reg. No. 38,040
Stanley Weinberg, Reg. No. 25,276
Attorneys for Applicant

JLC/SW/dhm/crj

Dated: January 3, 2007

☒ P.O. Box 980
Valley Forge, PA 19482
(610) 407-0700

☐ P.O. Box 1596
Wilmington, DE 19899
(302) 778-2500

The Director is hereby authorized to charge or credit Deposit Account No. **18-0350** for any additional fees, or any underpayment or credit for overpayment in connection herewith.

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, with sufficient postage, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on:

January 3, 2007

